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Paper No. 10

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(Petitioner)

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DEC 3 1 2003

OFFICE OF PETITIONS

In re Application of
David Howard
Application No. 09/777,472

: Decision
: On Access
: Petition

A petition for access was filed by Rick L. Abegglen attorney for Alkar-Rapid Pak for access to the above-identified application on November 7, 2003. A three week letter was mailed to applicants on November 14, 2003, requiring applicants to file papers containing any opposition to access which resulted in papers opposing access filed December 3, 2003.

The petition is **DISMISSED**.

Initially, applicants were asked to confirm the identity of the application(s) that correspond to petitioner's request. Although applicant's opposition paper states that application no. 10/369,318 is the application to which the petition refers, page 8 of the response states that the allowed claims in the letter to Foster Farms attached to the petition corresponds to application no. 09/777,472. Accordingly, the petition and opposition will be treated as requesting access to both applications.

Petitioner requests access to the above-identified application, arguing that letters to petitioner's customers interferes with petitioner's business or customers. Applicant opposes access to any of its applications stating that the letters are no more than an offer to license its technology and inform the world of their pending applications.

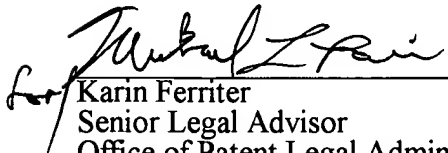
A member of the public may be entitled to access if "special circumstances" are shown which warrant a grant of access under 35 U.S.C. § 122. See Manual of Patent Examining Procedure (MPEP), Section 103. The use of such application to interfere with the business of others may be such special circumstances. Ex parte Bonnie-B Co. Inc., 1923 C.D. 42; In re Application for Trimless Cabinets, 128 USPQ 95 (Comm'r Pats. 1960); and In re Crossman, Kenrick, and LeMieux, 187 USPQ 367 (PTO Sol. 1975).

Patent applicants clearly have the right to inform the world of any pending applications and its intent to enforce any patent which issues, Trimless Cabinets, supra. The question is whether the applicants "crossed the line" and interfered with Alkar's business relationship with its customers prior to the issuance of a patent.

Petitioner states that expenses have been incurred evaluating applicant's license offers and disclosure of the existence of his patent applications. No direct evidence on the actual loss of business due to the applicants' statements has been presented with the petition. In the absence of direct evidence to the contrary, it does not appear that the applicants' statements exceeded the bounds of propriety, or amounted to anything more than fair notice of its patent position. As a result, granting the petition is not appropriate at this time.

Accordingly, the petition is dismissed. Petitioner's protest filed concurrently with the petition will be matched with the '472 application since only a single copy of the protest was filed and applicant has indicated that the application identified in the letter is the '472 application. Petitioner can file a protest in the '318 application if they wish to have the prior art material considered in that application.

Telephone inquiries concerning this decision should be directed to Michael L. Lewis at (703) 306-5585.


Karin Ferriter
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(Applicants)